



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>08/18/00</b>	Bill No:	<b>AB 330</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Floyd and Lewis</b>
Board Position:	<b>Neutral</b>	Related Bills:	<b>AB 2412 (Migden)</b>

### **BILL SUMMARY:**

This bill would specify that a retailer is not a “retailer engaged in business in this state” if that retailer’s sole physical presence in this state is to engage in convention and trade show activities for 15 days or less, except as specified.

### **ANALYSIS:**

#### Current Law:

Existing law, Section 6051 of the Sales and Use Tax Law, provides that retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. When sales tax does not apply, such as when sales take place outside of California, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California. Although the purchaser owes the use tax, Section 6203 currently provides that a retailer engaged in business in this state is required to collect the use tax from the purchaser and pay it to the state.

Section 6203 defines “retailer engaged in business in this state” for purposes of the Sales and Use Tax Law to include, among other activities, any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property. However, under the provisions of Section 6203, a retailer is *not* regarded as engaged in business in this state if that retailer’s sole physical presence in California is to engage in convention and trade show activities for not more than 7 days during a 12-month period, and the retailer did not derive more than \$10,000 of gross income from those activities during the prior year. The law provides, however, that the retailer is liable for tax on any sales occurring at the show, or pursuant to an order taken at the show.

#### Proposed Law:

This bill would amend Section 6203 of the Sales and Use Tax Law to provide that a retailer would not be regarded as a “retailer engaged in business in this state” if that retailer’s sole physical presence in this state is to engage in convention and trade show activities for not more than *15 days* in this state during any 12-month period, and the

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retailer did not derive more than \$100,000 of net income from those activities in this state during the prior calendar year.

The provisions of the bill would become operative on the first day of the first calendar quarter commencing 90 days after the bill is enacted.

#### Background:

The provisions of Section 6203 relating to trade and convention show activities were added by AB 258 (Floyd & Lewis), Chapter 621, Statutes of 1997. The Board had taken a “neutral” position on that measure.

Prior to the enactment of AB 258, the Board relied upon former subdivision (b) of section 6203 (now subdivision (c)(2)) to determine whether a trade show participant in California would be regarded as a “retailer engaged in business in this state.” At that time, a participant would have been regarded as engaged in business in this state (and thus liable for tax on all sales to California consumers whether at the show or subsequent to the show) even if he or she attended a single show and even if the participant made no actual sales at the show, but just demonstrated the products.

A similar measure which addressed this issue for purposes of the Bank and Corporation Tax Law was enacted in the 1996 Legislative Session (SB 1550, Lewis, Ch. 286). That measure added Section 23104 to the law to provide that any corporation that is not incorporated in California and whose sole activity in this state is engaging in similar convention and trade show activities in this state for 7 or fewer days during the year and that does not derive more than \$10,000 of reportable gross income to this state from those activities is not a corporation doing business in this state for purposes of the franchise tax (the franchise tax is not a tax on income, but rather, it is measured by net income for the privilege of doing business in this state. The tax rate is currently 9.3 percent of net income, or the minimum franchise tax of \$800, whichever is greater). The corporation is still, however, subject to corporation income tax, also set at 9.3 percent.

#### **COMMENTS:**

1. **Purpose of the bill.** This bill is sponsored by the Industry Council for Tangible Assets, a national trade organization for the precious-metals industry. According to the author’s office, the seven-day limit in current law falls short of providing exhibitors with adequate opportunities to participate in conventions and trade shows in California without being regarded as engaged in business in this state. The author’s office notes that California is losing additional business activity, as it is uneconomical for exhibitors to participate in these trade shows when the tax burden is excessive.
2. **The August 18, 2000 amendments incorporate double-joining language and increase the number of days that a convention or trade show participant can engage in activities in California.** Assembly Bill 2412 (Migden and Aroner) would also amend Section 6203 to provide that a retailer engaged in business in California has a use tax collection responsibility when that retailer uses of an affiliate,

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subsidiary, or related company outside this state, the purpose of which is to engage in similar transactions through the processing of orders through electronic means. Since AB 2412 and AB 330 would both amend Section 6203, this amendment double-joins these measures.

In addition, this amendment version would enable a person to engage in convention and trade show activities for *15 or fewer days*, rather than the 12 or fewer days provision contained in the previous version, before being regarded as engaged in business in California. According to the author's office, the current 12-day limitation period would not assist some participants of coin shows, as these shows typically last for a 7-day period, and generally occur twice a year.

3. **The June 14, 2000 amendments would change the income threshold.** In the previous version of this measure, the bill would have regarded any retailer who met the 12-day limitation criteria to be considered not engaged in business in this state, regardless of the volume of sales or income that retailer may have had. These amendments specify that the retailer may not derive more than \$100,000 of net income from those activities in this state during the prior calendar year.
4. **Should there be a separate standard between the Bank and Corporation Tax Law and the Sales and Use Tax Law for what is considered "engaged in business in this state" and "doing business in this state"?** Under Section 23104 of the Bank and Corporation Tax Law, corporations engaging in convention and trade show activities for *7 or fewer days* and that do not derive more than \$10,000 of gross income reportable to this state from those activities during that income year are not considered doing business in California for purposes of the Bank and Corporation Tax Law and are thus, no longer required to register with the Secretary of State or pay the \$800 minimum franchise tax. This bill, on the other hand, would regard these same corporations, as well as others, as not engaged in business in this state for purposes of the Sales and Use Tax Law when they engage in convention and trade show activities for *15 or fewer days* and derive no more than \$100,000 or more in *net income* during the prior calendar year. The rationale for separate standards between these tax laws is unclear.
5. **The burden of proof in meeting the criteria for the net income threshold should be placed onto the retailer.** In order for the Board to properly administer the proposed provisions related to the net income threshold, it is recommended that the bill incorporate a provision that places the burden onto the retailer to establish that he or she did not derive more than \$100,000 in net income. This would eliminate the necessity of sales and use tax auditors having to become experts in the income tax laws for purposes of determining what constitutes "net income."

#### **COST ESTIMATE:**

Some minor costs would be incurred in notifying affected retailers and Board staff. These costs would be absorbable.

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**REVENUE ESTIMATE:**

Mail order sales to Californians are estimated to amount to nearly \$2.8 billion annually. Subjecting these sales to the sales and use tax at a uniform 7.25% tax rate would result in state and local revenue of \$200 million.

The provisions of this measure would affect only a small portion of these sales. If only 1% percent of these mail order sales were affected by this measure, the annual revenue loss would be as follows:

State loss (5%)	\$1.4 million
Local loss (2.25%)	<u>0.6 million</u>
Total	<u>\$2.0 million</u>

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